

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**VICKIE S. HAMILTON**  
Claimant

VS.

**AMETEK ADVANCED INDUSTRIES, INC.**  
Respondent

AND

**ACE AMERICAN INSURANCE CO.**  
Insurance Carrier

Docket No. **1,043,276**

**ORDER**

Respondent and its insurance carrier request review of the February 17, 2009 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

**ISSUES**

Vickie S. Hamilton suffered a fall at work on April 28, 2008. Respondent admitted she injured her hand and wrist in that fall but denied that she injured her back. The Administrative Law Judge (ALJ) found Hamilton also suffered injury to her back arising out of and in the course of her employment from April 28, 2008 through June 21, 2008.<sup>1</sup>

Respondent requests review of whether Hamilton's accidental injury to her back arose out of and in the course of her employment. Respondent argues that Hamilton did not complain of back pain until June 2008 and the contemporaneous medical records at that time noted she attributed her back pain to mowing. Consequently, respondent argues Hamilton did not meet her burden of proof that she suffered a work-related back injury and the ALJ's Order should be reversed.

Hamilton requests the Board to affirm the ALJ's Order. She argues that her primary complaint after her fall at work was wrist and hand pain. And when she gradually started having back pain she was unsure as to the cause when she initially sought treatment. But she had questioned whether it might be related to her fall. As she continued working and

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<sup>1</sup> The ALJ ordered the parties to calculate the temporary total disability payments. However, both parties, in their briefs to the Board agreed that Hamilton had only requested temporary partial disability payments.

the back pain progressively worsened she concluded not only that the fall had caused her back pain but also her continued work was also aggravating that condition. As a consequence she then notified the employer that she believed the fall had caused injury to her back.

The sole issue for Board determination is whether Hamilton suffered accidental injury to her back arising out of and in the course of her employment.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

A preliminary hearing was held on February 17, 2009. Respondent admitted Hamilton injured her hand but denied that she also injured her back in the fall at work on April 28, 2008, or as she continued working.

Ametek Industries, Inc. (Ametek) manufactures small blowers and motors for different parts of aircraft. Vickie Hamilton was employed by Ametek as an after-market planner/stockroom. Her job duties included planning the work orders needed for after market such as warranties and she also managed a small stockroom for exchanging parts for the after market program. She testified her job duties required her to repetitively bend, twist and lift packaging.

On April 28, 2008, Hamilton tripped over a two-by-four that was laying on the cement floor and fell onto her left side. She noticed immediate bruising of her left hip, and complained of pain in her knee, head, thumb and wrist. She reported the injury to her supervisor, Danny Berger, and sought medical treatment with the company's physician, Dr. Mark Dobyns, at the Wichita Clinic. At the time of the injury she thought she might have broken her wrist. Dr. Dobyns diagnosed a sprain of the left wrist and thumb. Hamilton was provided pain medication as well as a thumb splint and an Ace wrap.

On May 12, 2008, Hamilton was again seen by Dr. Dobyns due to continued complaints of pain in her left wrist and thumb. X-rays were taken and then Hamilton was referred to Dr. George Lucas. On June 16, 2008, Hamilton was examined and evaluated by Dr. Lucas. The doctor recommended that she continue to take anti-inflammatory medication and wear the splint. Dr. Lucas released Hamilton to return to work.

Hamilton testified that on June 19, 2008, she had to lift boxes multiple times onto carts and then the next Saturday, June 21, 2008, she awoke with back pain. Hamilton sought treatment for her back with Dr. Reno, a chiropractor, on June 23, 2008. Dr. Reno's records contain an intake form that Hamilton filled out. In response to the question "Is the

condition due to injury or sickness arising out of employment?"<sup>2</sup> Hamilton filled in the response "?- mowing, possibly."<sup>3</sup>

Hamilton also sought treatment with her own primary care physician, Dr. Glen Patton, on June 26, 2008, but was actually seen by a physician's assistant. The medical record of that visit contains a history that she complained of back pain which started 6 days ago, after mowing the lawn.<sup>4</sup> An MRI was recommended. Hamilton continued to work.

On July 3, 2008, Hamilton returned to Dr. Patton's office. She was again seen by a physician's assistant wherein it was noted that Hamilton was continuing to get progressively worse. She was referred to Dr. David Sollo. She was examined and evaluated on July 22, 2008, due to complaints of back pain in her lower back and buttock which was radiating down to the posterior lateral thigh and calf to the ankle. She provided Dr. Sollo with a one month history of low back pain worsened by sitting which she does at work, but she denied any recent history of trauma.<sup>5</sup> Dr. Sollo treated her with epidurals to her lower back.

Hamilton spoke with Shelley Wellington, a human resources supervisor for respondent, in August 2008, and told her she thought her back condition was caused by her work related fall because she had otherwise done nothing to injure herself.

Hamilton testified:

Q. And had you previously discussed your back complaints with your supervisor?

A. Yes, I did.

Q. And who specifically did you discuss it with?

A. Danny Berger.

Q. And when?

A. May and June.

Q. Tell us about your discussions with Mr. Berger.

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<sup>2</sup> P.H. Trans., Resp. Ex. 1.

<sup>3</sup> *Id.*, Resp. Ex. 1.

<sup>4</sup> *Id.*, Cl. Ex. 9.

<sup>5</sup> *Id.*, Cl. Ex. 13.

A. It was in June when it really started getting bad that I asked him, I said, do you think this could have been from the fall? I said, because, I have not had any other injury. And he goes, it very well could have been. He goes, I don't know. He goes, I've hurt my back before getting out of bed. I have no idea. He goes, but, yes, it could have been from the fall. He goes -- and, I mean, we had that conversation.

Q. And then you subsequently went to Shelley Wellington, the human resources person with Ametek?

A. Yes.

Q. And tell us about the discussion -- and that discussion took place in August, correct?

A. Right. I told her that I believed it was work related because I had not done anything to injure myself and that I didn't know how I went about turning in a claim since so much time had passed. And she said, well, all I can do is write up a new claim and we will just see what they say. And that's where we left it. And she contacted Broadspire again.<sup>6</sup>

Hamilton was again referred back to Dr. Dobyns on August 19, 2008. The doctor ordered physical therapy. On September 8, 2008, she returned for a follow-up visit. Dr. Dobyns diagnosed Hamilton with a lumbar strain and piriformis syndrome. He placed restrictions on Hamilton of no lifting greater than 15 pounds and no bending or twisting and then referred her to Dr. Amitah Goel, a pain management specialist. On September 24, 2008, a CT scan post diskogram was performed and Hamilton was off work from September 24, 2008 through September 26, 2008.

Respondent then referred Hamilton to Dr. John Estivo. On October 2, 2008, she was examined and evaluated by Dr. Estivo. The doctor ordered another MRI which was performed on October 7, 2008. She was seen by Dr. Estivo again on October 8, 2008, to review the MRI results. Since she was having pain in her rear and leg, the doctor ordered an x-ray and MRI of the right hip as well as an EMG and myelogram/CT scan. Tests were performed on October 27, 2008. Hamilton returned to Dr. Estivo's office on November 4, 2008, wherein he diagnosed her as having lumbar radiculopathy. Dr. Estivo recommended a second opinion.

Dr. Matthew Henry examined and evaluated Hamilton on November 10, 2008. She returned to Dr. Sollo for cortisone injections to the piriformis muscle on November 19, 2008, and December 3, 2008. Dr. Sollo took her off work from December 3, 2008 through December 8, 2008, and then she returned to work with restrictions. On December 15, 2008, Hamilton returned for a follow-up visit with Dr. Henry. The doctor limited her to 4

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<sup>6</sup> *Id.* at 20-21.

hours of work each day and recommended another piriformis injection. Dr. Sollo gave Hamilton her piriformis injection on January 6, 2009, and kept her off work on January 7th. She was then allowed to return to work 4 hours a day.

Hamilton again saw Dr. Henry on January 19, 2009. She was doing better so he allowed her to work 6 hours a day for 2 weeks and then 8 hours a day for 2 weeks. When Hamilton followed that schedule her condition worsened so she went back to Dr. Henry on February 4, 2009. The doctor recommended another piriformis injection and reduced her work hours to 4 hours a day. On February 11, 2009, she received another injection from Dr. Sollo.

The Workers Compensation Act places the burden of proof upon the claimant to establish the right to an award of compensation and to prove the conditions on which that right depends.<sup>7</sup> “Burden of proof” means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party’s position on an issue is more probably true than not true on the basis of the whole record.”<sup>8</sup>

Respondent argues that the medical records establish that Hamilton injured her back mowing. And although she was receiving treatment it was not until August 2008 that she indicated her back complaints were due to work. Until that time the medical records contain no reference to her back complaints being related to work nor do the medical records reference an episode of lifting numerous boxes at work on June 19, 2008.

The evidence establishes that Hamilton was initially uncertain what caused the onset of her back pain. That fact is evidenced by her placing a question mark on the intake form when she initially sought treatment for her back with her chiropractor. And she explained that her reference to mowing was all that she initially could think that she had done. She testified:

Q. That’s all right. Ma’am, what happened back on June 20 of 2008 when you were mowing the lawn?

A. Nothing.

Q. Absolutely nothing happened that day.

A. No. I didn’t mow the lawn on June 20.

Q. Or approximately then.

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<sup>7</sup> K.S.A. 2008 Supp. 44-501(a).

<sup>8</sup> K.S.A. 2008 Supp. 44-508(g).

A. I woke up June 21 on a Saturday and something was hurting all the way down my rear, my leg. And all I could think of was I had mowed the week before. I didn't know what caused it. You just start trying to figure out what have I done, what have I done to injure myself.

Q. Because at that point you didn't know what it was, correct?

A. Correct.<sup>9</sup>

Moreover, it was Hamilton's uncontradicted testimony that she had a discussion with her supervisor, Mr. Berger, in May or June, about her back pain and whether he thought it might be connected to her fall at work. Mr. Berger's equivocal response did not help clear up Hamilton's uncertainty about what was causing her back pain. And the onset of significant back pain followed Hamilton's work activity lifting numerous boxes at work on June 19, 2008. Finally, as Hamilton continued working her back condition worsened as a result of her work activities as demonstrated by the fact that as she attempted to increase her work hours beyond 4 hours a day her condition rapidly worsened. This Board Member finds Hamilton has met her burden of proof to establish that her back condition arose out of and in the course of her employment with respondent.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>10</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2008 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>11</sup>

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge John D. Clark dated February 17, 2009, is affirmed.

**IT IS SO ORDERED.**

Dated this 29th day of April, 2009.

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HONORABLE DAVID A. SHUFELT  
BOARD MEMBER

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<sup>9</sup> P.H. Trans. at 42.

<sup>10</sup> K.S.A. 44-534a.

<sup>11</sup> K.S.A. 2008 Supp. 44-555c(k).

c: E. L. Lee Kinch, Attorney for Claimant  
Christopher J. McCurdy, Attorney for Respondent and its Insurance Carrier  
John D. Clark, Administrative Law Judge